

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Shawnee and Topeka, Kansas)

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MB Docket No. 03-26
RM-10638

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 20, 2004

Released: January 23, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division issued a *Notice of Proposed Rulemaking* in response to a Petition for Rule Making filed by Cumulus Licensing Corporation ("Cumulus"), licensee of FM Station KMAJ, Topeka, Kansas.¹ The *Notice* proposes to downgrade the license for FM Station KMAJ from Channel 299C to Channel 299C1, and to change the community of license from Topeka to Shawnee, Kansas. The Cumulus request was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.² Petitioner timely filed comments supporting the changes proposed in the *Notice*.³

DISCUSSION

3. In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁴ The proposed change of community will provide Shawnee with a first local aural service, while Topeka will continue to receive local service from nine stations.

¹ *Apopka, Maitland, and Homosassa Springs, Florida, Othello and Basin City, Washington, and Shawnee and Topeka, Kansas*, 18 FCC Rcd 783 (MB, 2003).

² See also *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7394 (1990).

³ Allur-Kansas City, Inc., licensee of Station KMJK, Lexington, Missouri, filed untimely comments. These comments contend that Cumulus intends to serve the Kansas City Urbanized Area and not Shawnee. These comments have been withdrawn; nonetheless, we will consider this issue in the context of evaluating the Cumulus proposal for a first local service preference.

⁴ 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

4. We recognize that Shawnee is located within the Kansas City Urbanized Area. In such circumstances, we do not blindly apply a first local service preference. Instead, we determine whether to apply a first local service preference after evaluating the independence of the proposed community from the central city of the urbanized area.⁵ Applying the *Tuck* criteria, Shawnee is sufficiently independent of Kansas City to qualify for a first local service preference, for the reasons discussed below.

5. In *Tuck*, the Commission specified the following three factors for evaluating a community's independence: (1) signal population coverage, *i.e.*, the degree to which the proposed station will provide service to both the suburban community and the larger metropolis; (2) the size and proximity of the suburban community relative to the metropolis; and (3) the interdependence of the suburban community with the metropolis. Of these three factors, the most significant is the third.⁶

6. As a Class C1 facility, Station KMAJ will, invariably, serve a large area. The proposed allotment thus would result in Station KMAJ's 70 dBu contour covering 43.8 percent of the Kansas City Urbanized Area, in which Shawnee is located. This coverage does not, however, preclude a finding that Station KMAJ will provide a first local service to Shawnee. Shawnee's population of 47,996 persons represents approximately 11 percent of the population of Kansas City, Missouri, the central city in the Kansas City Urbanized Area. The Commission has granted channel change petitions in instances where the proposed community's population was a considerably smaller percentage of the population of the urbanized area's central city.⁷ Moreover, FM stations have been allotted to numerous communities much smaller than Shawnee. Although Shawnee is only 14 kilometers (8.8 miles) from Kansas City, change of community proposals have been approved in instances where the new community was closer to the central city than is the case in this proceeding.⁸ Neither the extent of signal coverage, nor the relative size or proximity of Shawnee and Kansas City, precludes a finding that Shawnee is an independent community for allotment purposes.

7. Turning to the most important consideration, the interdependence of the proposed community with the central city in the urbanized area, we find that petitioner has established that Shawnee is an independent community, rather than dependent upon Kansas City. Petitioner states that the City of Shawnee has its own unique identity and history that are separate from that of Kansas City. Shawnee,

⁵ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*"), and *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C.Cir. 1951) ("*Huntington*").

⁶ *Tuck*, *supra*. See also *Eatonton and Sandy Springs, Georgia*, and *Anniston and Lineville, Alabama*, 6 FCC Rcd 6580, ¶23 (MMB. 1991), *app. for rev. dismissed*, 12 FCC Rcd 8392 (MMB. 1997).

⁷ See *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB. 1996) (Newcastle had population equal to 0.9 percent of Oklahoma City), and cases cited therein.

⁸ See, *e.g.*, *Mullins and Briarcliffe Acres, South Carolina*, 14 FCC Rcd 10516 (MMB. 1999) (new community of allotment four miles from the central city of the urbanized area)

the seventh largest city in the state of Kansas, was settled in the 1830s. Shawneetown, later shortened to Shawnee, was incorporated in 1856, two years after the Territory of Kansas was created. Shawnee became the first county seat of Johnson County. Shawnee evolved into a small farm market center until the 1950s, when population shifts from large urban areas to smaller surrounding towns occurred.

8. The population of Shawnee has tripled since 1970, and Shawnee has experienced a population increase of 26.3 percent from 1990 to 2000, growing from 37,993 persons to 47,996 persons. Businesses and other organizations located in Shawnee afford its residents extensive employment opportunities. Cumulus cites U.S. Census Database statistics, which show that 3,218 of 18,149 employed Shawnee residents, approximately 17.7 percent, work in Shawnee. Moreover, there are more than 1,300 businesses located in Shawnee, including several major employers with hundreds of employees. A substantial number of these businesses identify themselves by using "Shawnee" in their names. Shawnee also has numerous churches, civic organizations, and health care providers and medical practice groups.

9. Shawnee residents are served by a local weekly newspaper, the *Shawnee Journal Herald*, with a circulation of 10,000 copies. The *Herald*, which began publication in 1923, contains news articles about local political issues and other subjects of local interest, such as local sports stories. Petitioner states that Shawnee is a separate and distinct advertising market from Kansas City and that many businesses located in Shawnee advertise in the *Shawnee Journal Herald* rather than in Kansas City media outlets. Shawnee resident also may access the city's website to learn about Shawnee community events and news.

10. Shawnee has its own zip codes⁹ and its own local government and elected officials, including an elected mayor and eight council members, two from each ward, who serve four-year terms. The city council, in turn, selects a city manager. The government of Shawnee has numerous departments, including city clerk, public works, finance, engineering, police, fire, park, and recreation and planning. It also has a municipal court division, licensing division, human resources, animal warden, fire chief, police chief, public safety director, economic development director, senior citizens' coordinator, building inspectors, and electrical and plumbing inspectors. The City of Shawnee has 250 full-time employees and had a total budget of nearly \$26 million for fiscal year 2002. There are two public school districts in the City of Shawnee: Shawnee Mission School District and DeSoto School District. Shawnee has a total of nine public elementary schools, two public middle schools, two public high schools, and several private schools.

11. The proposed downgrade and change of community will result in 134,899 persons losing service and 1,542,029 persons gaining service. There are a few small sections of the loss area that will be left with only four full-time reception services once Station KMAJ-FM is reallocated to Shawnee. This area consists of 494 persons in 205 square kilometers. The remainder of the loss area will continue to be served by five or more transmission services.¹⁰ A few portions of the gain area currently receive less

⁹ The zip codes designated exclusively for the City of Shawnee are: 66203, 66214, 66216, 66217, 66218, 66219, 66220, 66226, and 66286.

¹⁰ The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*,

than five transmission services. Allotment of Channel 299C1 at Shawnee will provide a fourth service to 481 persons in 43 square kilometers and a fifth service to 4,610 persons in 108 square kilometers.

12. For all of the foregoing reasons, we conclude that the public interest would be served by substituting Channel 291C1 for Channel 291C at Topeka, Kansas, and reallocating Channel 299C1 at Shawnee, Kansas. Channel 299C1 can be allotted to Shawnee in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 41.3 kilometers (25.6 miles) west of Shawnee at coordinates 39-09-06 NL and 95-09-28 WL.

13. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), 0.283, and 1.420(i) of the Commission's Rules, IT IS ORDERED, That effective March 8, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED as follows:

Community	Channel Number
Shawnee, Kansas	299C1
Topeka, Kansas	-----

15. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Cumulus Licensing Corp., for FM Station KMAJ, IS MODIFIED to specify operation on Channel 299C1 at Shawnee, Kansas, subject to the following conditions:

- (a) Within 90 days of the effective date of the Order, the licensee of Station KMAJ-FM shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

16. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(l), any party seeking a change in community of license of a TV or FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in

community of license and/or upgrade. As a result of this proceeding, Cumulus Licensing Corp., licensee of FM Station KMAJ, is required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes specified above.

17. IT IS FURTHER ORDERED, that the request of Allur-Kansas City, Inc. to submit untimely comments in this proceeding is DISMISSED as MOOT; and

18. IT IS FURTHER ORDERED, that the motion of Cumulus Licensing Corp. to strike the untimely comments of Allur-Kansas City, Inc. is DISMISSED as MOOT; and

19. IT IS FURTHER ORDERED, that the request of Cumulus Licensing Corp. to submit a supplement to the record in this proceeding is DISMISSED as MOOT; and

20. IT IS FURTHER ORDERED, that the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this Order to the following:

Mark N. Lipp
Vinson & Elkins, LLP
The Willard Office Building
1455 Pennsylvania Avenue, NW
Washington, D.C. 20004-1008
(Counsel for Cumulus Licensing Corp.)

21. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

22. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau